



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/626,187

07/24/2003

John Davies

779-X03-002

1556

27317 7590 07/11/2007  
FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO  
21355 EAST DIXIE HIGHWAY  
SUITE 115  
MIAMI, FL 33180

EXAMINER

MITCHELL, TEENA KAY

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

07/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary**

Application No.

10/626,187

Applicant(s)

DAVIES, JOHN

Examiner

Teena Mitchell

Art Unit

3771

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-26 is/are allowed.
- 6) ☐ Claim(s) 15-20, 27-37 and 39 is/are rejected.
- 7) ☒ Claim(s) 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
TEENA MITCHELL  
PRIMARY EXAMINER

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claims 31 and 32 are identical claims both depending from claim 30, either one of the claims should be canceled or the claim dependency needs to be corrected.

### ***Claim Rejections - 35 USC § 112***

**The following is a quotation of the second paragraph of 35 U.S.C. 112:**

**The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.**

**Claim 29, 37 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 29 recites the limitation "...the boom microphone..." in line 2, the claim depends from claim 28 which does not go back to a claim with the limitation of a boom microphone. There is insufficient antecedent basis for this limitation in the claim.

In claims 37 and 39, "...lies at the same location..." is indefinite, it is unclear as to what is meant by the same location.

### ***Claim Rejections - 35 USC § 102***

**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**Claims 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloomfield (5,224,474).**

Regarding claim 15, Bloomfield discloses a microphone adapter (at 36) for a respirator (80) having a speech projector (at 36a), and an exhale diaphragm (Fig. 5), the adapter comprising a sound tube (38a) with a first open end designed to be located and held relative to the speech projector to receive speech therefrom at a point downstream of an exhale diaphragm and a second open end (based upon element 38a being a tube it inherently is open at two ends) designed to be coupled with a microphone (34) located outside and adjacent the respirator, , whereby, in use, speech is emanating from the speech projector is transmitted via the sound tube to the microphone (34).

Regarding claim 16, Bloomfield discloses a microphone box (note Fig. 5 in which the microphone is covered) in which the second open end of the sound tube terminates, said box being arranged to fit over a microphone located outside and adjacent the respirator and shield the microphone from any incident sound other than that received via the sound tube.

Regarding claim 18, note rejection of claim 15 above

Regarding claim 19, Bloomfield discloses wherein the respirator exhale diaphragm located in a region substantially in front of the mouth of a wearer of the respirator (Fig. 5), which diaphragm opens into the sound projector to leave a clear

passage between the mouth of the wearer and the first open end of the sound tube (at 38b) when the wearer exhales during the speech process.

Regarding claim 27, note rejection of claim 15 above.

Regarding claim 28, note rejection of claim 16 above.

Regarding claim 30, Bloomfield discloses a respirator (80).

Regarding claim 31, note rejection of claim 16 above.

Regarding claim 32, note rejection of claim 16 above.

Regarding claim 33, note rejection of claim 19 above.

Regarding claim 34, Bloomfield discloses a resilient sound tube locator mounted on the first open end of the sound tube (Figs. 1, 5).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bloomfield (5,224,474).

Bloomfield does not disclose the sound tube u-shaped and composed of semi-rigid material. It would have been obvious to one of ordinary skill in the art to have the

sound tube U-shaped and composed of a semi-rigid material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design consideration. In re Leshin, 227 F.2d 197, 125 USPQ 416.

**Claims 20 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloomfield (5,224,474) in view of Chen 5,279,286).**

Bloomfield discloses the claimed invention except for the inner face seal internal of an outer layer. Chen in a respirator teaches an inner face seal (Figs. 1, 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the mask of Bloomfield to employ any well known respirator mask with an inner face seal which provides a better seal means as taught by Chen one mask for another as both mask are used in environmental areas where biological contamination is often encountered.

Regarding claim 34, note rejection of claim 20 above.

***Allowable Subject Matter***

Claims 21-26 are allowable over the prior art of record.

Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Teena Mitchell  
Primary Examiner  
Art Unit 3771  
June 27, 2007

TKM